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SUMMARY RECORD OF THE 58th MEETING

Chairman: Mr. YAMADA (Japan)
(Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses)

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Mr. Yamada (Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses) took the Chair.

The meeting was called to order at 3.20 p.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued) (A/49/10, A/C.6/51/NUW/WG/L.1/Rev.1 and Add.1, A/C.6/51/NUW/WG/CRP.57, A/C.6/51/NUW/WG/CRP.81 and A/C.6/51/NUW/WG/CRP.89)

1. The CHAIRMAN suggested that the Working Group consider outstanding provisions, starting with articles 2, 3, 4 and 32. In response to requests for clarification from Mr. PFIRTER (Switzerland) and Mr. SVIRIDOV (the Russian Federation), he said that consultations would continue on articles 5, 6 and 7, taken together and that article 33 would be considered once the member responsible for coordinating it had submitted his report.

Article 2, subparagraph (a)

2. The CHAIRMAN said that the Egyptian proposal with regard to the term "groundwater" (A/C.6/51/NUW/WG/CRP.57) raised a highly technical issue but had no bearing on the substance. Several delegations were also opposed to including the concept of "groundwater" and their positions had been duly recorded. He therefore suggested that subparagraph (a) should be adopted ad referendum and that the technical point raised by Egypt should be taken up later.

3. It was so decided.

Article 2, subparagraph (b)

4. The CHAIRMAN recalled that one delegation had expressed reservations with regard to the term "international watercourse"; those reservations had been duly recorded. He suggested that subparagraph (b) should be adopted ad referendum.

5. It was so decided.

Article 2, subparagraph (c)

6. The CHAIRMAN recalled that the Netherlands, on behalf of the European Union and the United States of America, had put forward a proposal defining the term "watercourse State" in subparagraph (c) and adding a new subparagraph (d) that would define the term "regional economic integration organization" (A/C.6/51/NUW/WG/CRP.81). He suggested that the Working Group start by considering the first part of that proposal.

7. Mr. NGUYEN QUY BINH (Viet Nam) said that the term "Party to this Convention" might unduly limit the scope of the definition, since international watercourses might be situated in the territory of States that were not parties to the Convention.

8. Mr. HARRIS (United States of America) said that the convention imposed a number of obligations on watercourse States in exchange for a number of rights. Given that some, but not all, of its provisions reflected customary international law, omitting the term "Party to this Convention" would have the perverse effect of inviting States not to ratify the convention, as they would then be able to enjoy its benefits without assuming the corresponding obligation.

9. Mr. LAVALLE (Guatemala) said that the proposed wording might create the impression that "Party to this Convention" meant States and federations of States, whereas it was intended to mean States and regional economic integration organizations. It might be appropriate to remove that ambiguity by drawing on the definition of State party contained in the Vienna Convention on the Law of Treaties.

10. Mr. KASME (Syrian Arab Republic) said that the term "Party to this Convention" was superfluous, since subparagraph (c) defined "watercourse State" in its objective, geographical sense. A watercourse State, whether or not it was a party to the convention, remained subject to the obligations under international law that resulted from its geographical situation.

11. Mr. PAZARCI (Turkey) endorsed the statement by the United States representative and pointed out that paragraph 6 of article 3 reaffirmed the well-established rule whereby a State that was not a party to an agreement was not bound by it.

12. Mr. PREDA (Romania) proposed that subparagraph (c) should be amended as follows: "watercourse State" means a State or member States of an international economic organization in whose territory ...".

13. Mr. ROSENSTOCK (Expert Consultant) said that the sole purpose of the new wording proposed for subparagraph (c) was to ensure that a State that was not a Party to the Convention did not claim rights under the convention when it was not bound by any of the corresponding obligations. The rights of such a State under international law were not at issue. The proposed change was particularly sensible because, according to the final clauses already agreed upon by the Working Group, a regional economic integration organization could become a party to the convention even if none of its member States was a party.

14. Mr. AL-WITRI (Iraq) said that the term "watercourse State" had been defined on the basis of purely geographical criteria related to the presence of part of a watercourse in the territory of that State and not to whether or not that State was a party to the convention. Watercourse States were in any case subject to the rules of international law governing international watercourses. The addition of the term "Party to this Convention" was therefore inappropriate and only made the definition more vague, with all the attendant consequences in terms of obligations, which might then be evaded by not becoming a party to the convention.

15. Mr. NUSSBAUM (Canada) agreed with the argument put forward by the United States representative and the Expert Consultant and supported the changes proposed by the Netherlands on behalf of the European Union and the United

States. He further suggested that commas should be inserted before and after the phrase "or, where applicable, ... whose member States".

16. The CHAIRMAN said that the point was to define the concept of watercourse State within the meaning of the Convention under consideration and not within that of other instruments.

17. Mrs. LADGHAM (Tunisia), referring to paragraph 14 of the commentary of the International Law Commission (ILC), said that the definition in subparagraph (c) was clearly based on a geographic criterion.

18. Mr. NGUYEN QUY BINH (Viet Nam) said that the proposed amendments were understandable as far as the rights provided for by the Convention were concerned, but less so where the obligations placed on States which were not parties, including the obligation not to cause harm, were concerned.

19. Mr. AMARE (Ethiopia) said that, since the Convention had to establish norms and principles applicable to all States, whether or not they were parties to the Convention, it was preferable to retain the descriptive geographical definition of watercourse State.

20. Mr. ROSENSTOCK (Expert Consultant) said that the concern was to avoid creating a situation where a State would be compelled as a party to the Convention to grant rights, such as a six-month advance notification, to another State which, because it was not a party to the Convention, would not be bound by the same obligation. Noting that such a situation was unacceptable to Canada and the United States of America, which had maintained excellent relations with each other in that field for nearly a century, he wondered how States which did not have comparable relations with their own neighbours could press for the adoption of a provision which was bound to lead to such a situation. While certain principles set out in the Convention were part of customary international law, the Convention also contained very many specific and important provisions which could not be construed as part of such law and which should not benefit States that were not bound by the corresponding obligations.

21. Mrs. VARGAS de LOSADA (Colombia) endorsed the idea contained in the proposal of the Netherlands and United States delegations. However, that proposal could be improved upon if it was stated, for example, that the term "watercourse State" meant a State party to the Convention in whose territory a watercourse was situated or, in the case of a regional economic integration organization, when part of the watercourse flowed through one or more of the member States of such organization. Any ambiguity would be dispelled by specifying that they were regional economic integration organizations; that would facilitate the understanding of the article.

22. Mr. KASME (Syrian Arab Republic) thanked the Expert Consultant for having recalled in particular that a State not a party was still subject to international law. His delegation wished to retain the original wording of the article in order to make it clear that a State which was not bound by the Convention could nevertheless not act as it pleased. Moreover, the Working Group was engaged in codifying international law and therefore could not say that a State which was not a party to the Convention should not enjoy any

rights. Objectively speaking, such a State remained a watercourse State. The term "party to the present Convention" could have that negative effect, but his delegation would not make a major issue of the matter.

23. Mr. SALINAS (Chile) endorsed the proposal of the United States delegation as well as the Colombian delegation's amendment.

24. Mr. VORSTER (South Africa) said that his delegation was satisfied with the explanations given by the representative of the United States and by the Expert Consultant and wholly endorsed their views.

25. Mr. AL-WITRI (Iraq), recalling that the Expert Consultant of the Working Group was also a Special Rapporteur of the International Law Commission on the topic of international watercourses, said that it was the Commission which had stated in its report that the definition in subparagraph (c) relied on a geographical criterion and was not linked to the fact of being a State party to the Convention. In any case, should the proposed amendment be adopted, the Convention was doomed to failure because States would refrain from acceding to it in order not to assume any obligations.

26. Mr. PAZARCI (Turkey) said that the strict geographical definition of the term "watercourse State" was not sufficient. It was true that a State might be a watercourse State without being a party to the Convention, but the States parties were under the obligation to grant to third States the rights provided for in the Convention precisely because the watercourse was geographically part of their territory. He therefore found the proposals of the Netherlands and United States delegations very realistic and fully endorsed the view expressed by the Expert Consultant on that subject. In that connection, he recalled the provisions of the Vienna Convention on the Law of Treaties relating to the express consent of third States in respect of rights and obligations provided for under conventions.

27. The CHAIRMAN said that the views of delegations would be duly reflected in the summary record and requested the representatives of Colombia and of the United States of America to hold consultations with all interested delegations in order to reach agreement on subparagraph (c). In response to a request for clarification from the representative of Viet Nam, he said that the consultations would also cover the original text prepared by ILC. He then suggested that the Committee should take up subparagraph (d) proposed by the Netherlands and United States delegations and adopt it ad referendum, on the understanding that the consultations would continue on the other definitions proposed by delegations, including that of the Russian Federation.

28. It was so decided.

Article 3

29. Article 3, paragraphs 1 (A/C.6/51/NUW/WG/L.1/Rev.1), 2 (A/C.6/51/NUW/WG/CRP.89) and 3 (A/C.6/51/NUW/WG/L.1/Rev.1/Add.1), were adopted ad referendum.

30. The CHAIRMAN, turning to article 3, paragraph 4 (A/C.6/51/NUW/CRP.89), said that the Coordinator had amended it by inserting the words "an entire watercourse or" after the words "Such an agreement may be entered into with respect to".

31. Mr. RAO (India) said that the use of the phrase "except with their express consent" raised a problem because the words "to a significant extent", which conveyed the concept of a threshold, were used in the same paragraph. Since that concept was central to article 7, the text of the two articles should be harmonized to the extent possible. The Expert Consultant might wish to indicate whether the same threshold of seriousness applied in both cases.

32. Mr. ROSENSTOCK (Expert Consultant) said that, according to the ILC commentary, the threshold of significant extent was lower than that of significant harm.

33. Mr. SVIRIDOV (Russian Federation) proposed replacing the words "except with their express consent" by "without the express consent"; that wording had, as far as he could recall, been preferred by the Working Group and it did not change the general meaning of the article.

34. Mr. LAMMERS (Chairman of the Drafting Committee) said that he saw no reason why the text should not be so amended. He therefore proposed that the wording contained in footnote 6 to document A/C.6/51/NUW/WG/L.1/Rev.1 should be adopted.

35. Mr. RAO (India) said that the problem was that considerable emphasis was placed on the concept of express consent, whereas the draft prepared by the International Law Commission simply said that the interests of another State should not be diversely affected. That issue should be discussed when article 7 was considered. However, his delegation would not insist on that point if no other delegation wished to do so.

36. Mr. GONZALEZ (France) remarked that, in French, it would be preferable to retain the original wording for reasons of style, but that the meaning was the same in both cases.

37. Paragraph 4, as amended in accordance with footnote 6, was adopted ad referendum.

38. Paragraph 5 was adopted ad referendum.

39. THE CHAIRMAN said that, in the English version of the coordinator's report (A/C.6/51/NUW/WG/CRP.89), paragraph 6 of article 3 was mistakenly numbered "paragraph 5".

40. Mr. HARRIS, (United States of America), responding to Mr. OBEIDAT (Jordan) who had asked why paragraph 6 used the term "international agreement" when elsewhere the term "agreement" was judged sufficient, observed that deleting "international" would not affect the meaning of the text.

41. Paragraph 6, as amended by Jordan, was adopted ad referendum.

Article 4

42. The CHAIRMAN recalled that paragraph 1 of article 4 had been adopted ad referendum and that the Russian delegation had proposed that, in paragraph 2, the phrase "whose use of an international watercourse may be affected" should be replaced by "whose interests in the use of an international watercourse may be affected" (A/C.6/NUW/WG/CRP.80).

43. Mr. HARRIS (United States of America) expressed concern that the amendment proposed by the Russian Federation might make the text more vague and extend its scope unduly, in that non-watercourse States might be able to invoke the convention because of their interests in the use of a watercourse.

44. Mr. CAFLISCH (Switzerland), Mr. PULVENIS (Venezuela) and Mr. PATRIOTA (Brazil) supported the statement by the United States representative.

45. Mr. MANONCI (United Republic of Tanzania) pointed out that the text under consideration dealt only with actual uses, whereas the Russian amendment also covered potential uses and should therefore be considered.

46. Mr. LOIBL (Austria), Mr. PAZARCI (Turkey), Mr. AMER (Egypt), Mr. YAHAYA (Malaysia), Mr. NGUYEN QUY BINH (Viet Nam) and Mr. CHIRANOND (Thailand) said that they were in favour of adopting the text of paragraph 2 without amendment. The representative of Turkey further stated that the text as it stood protected rights, while the text proposed by the Russian delegation would protect interests, with all the problems which that posed in terms of the definition and legitimacy of such interests.

47. Mr. SVIRIDOV (Russian Federation) expressed surprise at the opposition encountered by his delegation's proposal, which had been purely editorial. He deferred to the general will.

48. The CHAIRMAN said that the Russian delegation's position would be duly recorded in the summary record. He suggested that article 4, paragraph 2, should be adopted ad referendum.

49. It was so decided.

Article 32 (A/C.6/51/NUW/WG/L.1/Rev.1 and A/49/10)

50. The CHAIRMAN recalled that at the end of the previous debate on article 32, most delegations had wanted to revert to the original text drafted by the International Law Commission, and two delegations had wanted to consult their Governments if the Working Group was to proceed on that new basis.

51. Mr. SVIRIDOV (Russian Federation) recalled that, at the previous session, his delegation had raised an objection of principle to the inclusion of article 32, the content of which seemed to be a matter for bilateral relations. Since that objection had not been sustained, his delegation had proposed a new text for article 32, also without success. In the Drafting Committee, the wording proposed by the International Law Commission had been amended to meet the concerns of numerous delegations. In a spirit of compromise, his delegation

had accepted the amended text proposed by the Drafting Committee. In view of the many concessions that it had made, his delegation hoped that all delegations would show a spirit of compromise and that the version of article 32 proposed by the Drafting Committee would be adopted.

52. The CHAIRMAN said that his remarks had summarized the situation existing at the end of the most recent meeting of the Working Group at which article 32 had been considered.

53. Mr. MANONCI (United Republic of Tanzania) announced that his delegation also wished to reserve its position on article 32. He was concerned that the text proposed by the International Law Commission broadened the territorial scope for bringing civil action. That was particularly unjustified in view of the fact that the regime of civil liability for transboundary harm was being studied in the context of the drafting of a text on international liability for injurious consequences arising out of acts not prohibited by international law.

54. Ms. VARGAS de LOSADA (Colombia) maintained the reservation that she had expressed within the Drafting Committee.

55. Mr. RAO (India) and Mr. AMARE (Ethiopia) maintained their reservations to article 32 as a whole.

56. Ms. GAO Yanping (China) recalled that the Drafting Committee had considered the phrase "in its territory" to be preferable to "under its jurisdiction". She therefore proposed that the original text drafted by the International Law Commission should be amended accordingly.

57. Mr. ROSENSTOCK (Expert Consultant) pointed out that, in many contexts, "jurisdiction" was preferable to "territory", but not in the present case. The proposed amendment did not therefore pose any problem.

58. Mr. HABIYAREMYE (Rwanda) said that his delegation supported the Russian proposal and maintained its reservations with regard to article 32.

59. The CHAIRMAN suggested that the wording proposed by the International Law Commission, as amended by China, should be adopted.

60. It was so decided.

61. Mr. SVIRIDOV (Russian Federation) expressed regret that the gavel had prevailed over compromise, and reiterated that his delegation reserved its position with regard to the article just adopted.

The meeting rose at 5.05 p.m.